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Watkins v. United States and Congressional Power of Investigation

By HARTLY FLEISCHMANN†

A man may be subpoenaed to appear before a committee or subcommittee of the Congress of the United States which may consist of one or more men. In the presence of the committee staff and counsel and as well of the press and perhaps radio and television, not to mention the general public, he is extensively questioned about his beliefs, activities and associations past and present. These questions and these circumstances of inquiry pose a very considerable personal dilemma for the unfortunate witness. Similar questions about other persons will make the dilemma much more serious, and the witness would be less than a man if he did not recognize and attempt to avoid it. In *Watkins v. United States*¹ the Supreme Court had this kind of situation before it and the opportunity was presented for exposition and determination of the rights of an individual when they collide with investigatory power of Congress. The direct decision of the issue was avoided but part of the court managed to discuss it² and thus to provoke a cascade of comment and criticism from press and public and from professional sources as well. Because the result in *Watkins* was to relieve the defendant of the immediate duty of answering questions put to him by an investigating committee of the House of Representatives and because dicta in one opinion suggest broad limitations on the conduct of investigatory committees the decision will be as dear to the "liberal" elements of the polity as it has been offensive to those who fear the Communist threat.

Final evaluation of the case will naturally await the passage of time, the occurrence of events and the usual "sober second thoughts"³ of the community. It will nevertheless be instructive to undertake a description of the case and to relate it to what has gone before. At the same time, some guarded predictions about what it means for the future are possible though these, no matter how qualified, will be as infirm as such prognostications of Supreme Court actions must usually be.

Analysis will show that despite the breadth of language used by Chief Justice Warren in his "Opinion of the Court" and by Mr. Justice Clark in his lone dissent, the holding in *Watkins* is very narrow and while it may not

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¹ 354 U.S. 178 (1957).

² 354 U.S. at 183-216.

³ Stone, *The Common Law in the United States*, 50 HARV. L. REV. 4, 25 (1936).

be the only possible one, it is clearly sensible and consistent with the facts and with prior adjudications concerning both the congressional power to investigate and in the general area of due process in the administration of the criminal law.⁴ For the future, it can be said that the case demonstrates a concern over the extent and proper exercise of the investigatory power as it affects individual rights which may be expected to increase and which now seems more likely to elaborate itself in the law than it has in the past. This conclusion is based on statements in other cases taken in conjunction with the opinion of Chief Justice Warren which had the concurrences of Justices Black, Douglas and Brennan.

Considered only as an exercise of the judicial art, the opinion of the Chief Justice is prolix, and it is so amorphous in content and organization that any sort of predictive analysis is most difficult. Indeed, determination of the precise holding is not certainly possible. Nevertheless it does suggest limitations on the power of Congress to conduct investigations and, more important, on its treatment of witnesses, and these will be taken up in later paragraphs. But beyond consideration on narrow technical grounds, the Chief Justice has written an energetic and heated essay. Essentially, it is the response of a decent man to the dilemma of another decent man to which he is sympathetic so far as his office will permit. As such, it will not commend itself to legal scholars nor fit into nice legal categories. Mr. Chief Justice Warren has tapped some of the feelings which must be and always have been generated by the compelled disclosure of the past and present activities and beliefs of friends and associates. Though these feelings are not in the end the law of the *Watkins* case and though they may not be a proper explicit basis for future opinions, it may be said that they must be recognized and resolved before there can be any permanent and effective accommodation of the competing interests of individual and legislature.

Background Decisions

The historical development and use of congressional investigations and their legal underpinnings have been exhaustively covered elsewhere.⁵ It will be helpful here to recognize that there are two general sorts of limitations which must be considered and which will concern a court. First, the power of the legislative body to conduct investigations will be in issue, and

⁴ *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *United States v. Rumely*, 345 U.S. 41 (1953); *Tenney v. Brandhove*, 341 U.S. 367 (1951).

⁵ Landis, *Constitutional Limitations on the Power of Congress to Investigate*, 40 HARV. L. REV. 153 (1926); McGeary, *Congressional Investigations: Historical Development*, 18 CHI. L. REV. 425 (1951); Lashley, *The Investigating Power of Congress: Its Scope and Limitations*, 40 A.B.A.J. 763 (1954); Merry, *The Investigating Power of Congress: Its Scope and Limitations*, 40 A.B.A.J. 1073 (1954). Note, *The Power of Congress to Investigate and to Compel Testimony*, 70 HARV. L. REV. 671 (1957).

second, granted the power in the abstract to inquire into a certain matter, problems will arise when that power is thought to interfere either in its scope or in the manner of its exercise with other rights. Of course, these things are not so easy to separate in practice and the division is only a rule of thumb, but the distinction will permit an assessment of the effect of the *Watkins* case.^{5a} The various principles which have evolved can be summarized, and then it will be possible to see what effect the *Watkins* case has on them.

In the first place, it was early established that Congress itself had the power to punish those whom it found to be in contempt of it.⁶ That is, the offender could be compelled to appear at the bar of the House of Representatives or of the Senate and then imprisoned by either of those bodies. It was held, however, that such punishment could only last until the next adjournment and that the power did not exist unless the condemned conduct directly threatened or interfered with the functioning of Congress.⁷ A statute making contempt of Congress criminal was passed because of these limitations.⁸ This statute has been sustained against Constitutional objection⁹ and for reasons of time and efficiency has been used almost exclusively in recent years to enforce congressional power over reculant witnesses.¹⁰ The development of congressional investigatory power has been largely through interpretation of this contempt statute.

A statement of the principles which apply to congressional investigations follows. These principles may be interpreted as limitations on, or at least as definitions of, the scope of court review of this particular legislative activity, but they also establish substantive and procedural standards.

^{5a} Compare the following language from *Watkins*:

"In the decade following World War II, there appeared a new kind of congressional inquiry unknown in prior periods of American history. Principally this was the result of various investigations into the threat of subversion of the United States Government, but other subjects of congressional interest also contributed to the changed scene. This new phase of legislative inquiry involved a broad-scale intrusion into the lives and affairs of private citizens. It brought before the courts novel questions of the appropriate limits of congressional inquiry. Prior cases, like *Kilbourn*, *McGrain* and *Sinclair*, had defined the scope of investigative power in terms of the inherent limitations of the sources of that power. In the more recent cases, the emphasis shifted to problems of accommodating the interest of the Government with the rights and privileges of individuals. The central theme was the application of the Bill of Rights as a restraint upon the assertion of governmental power in this form." 354 U.S. at 195.

⁶ *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204 (1821).

⁷ *Re Chapman*, 166 U.S. 661 (1897). On the question of a direct interference, see *Marshall v. Gordon*, 243 U.S. 521 (1917), where a defamatory letter sent to a congressional committee was held not to be such an interference as would subject the defendant to summary contempt punishment by Congress. The Court was careful to distinguish the criminal remedy where the defendant would be heard.

⁸ 52 STAT. 942 (1938); 2 U.S.C. § 192 (1952).

⁹ *Re Chapman*, 166 U.S. 661 (1897).

¹⁰ 354 U.S. at 207.

1. *The investigation must be in aid of a valid legislative purpose.*

The courts will examine the purpose for which a congressional investigation is being conducted by looking at the authorizing resolutions or statutes. Although this purpose is always open to examination, the case of *Kilbourne v. Thompson*¹¹ stands alone in its finding that no valid legislative purpose existed which would justify the contempt citation of the defendant. It was there held that an inquiry into the bankruptcy of Jay Cooke and Co. and into the improvident investment of government funds with that enterprise had no such legislative purpose as would permit questioning of the plaintiff about other members of a real estate pool to which he belonged and in which Cooke had an interest. That interest would presumably have been an asset of the bankrupt's estate. The Court, speaking unanimously through Mr. Justice Miller, held that an inquiry into the private affairs of an individual would not be permitted, at least in the absence of some mention in the authorizing resolution of proposed legislation or of impeachment of the official who had made the improvident investment. Without some such purposes, the proceeding was simply a usurpation of the already existing jurisdiction of the bankruptcy court.

This statement is actually only a description of the result in *Kilbourne*, since the precise basis for the opinion and the reason that there was no valid legislative purpose cannot surely be known. The language does not make it perfectly clear whether it would have been possible for Congress to define any legislative purpose at all to justify the questions asked. Using a style that is more colorful than usual for this period, but no clearer, Mr. Justice Miller at once challenged the vagueness of the resolution—thus suggesting that only some stylistic revision was necessary—and still suggested that the whole matter could not constitutionally be investigated:

"The resolution adopted as a sequence of this preamble contains no hint of any intention of final action by Congress on the subject. In all the argument of the case, no suggestion has been made of what the House of Representatives or the Congress could have done in the way of remedying the wrong or securing the creditors of Jay Cooke and Co., or even the United States. Was it to be simply a fruitless investigation into the personal affairs of individuals? If so, the House of Representatives had no power or authority in the matter more than any other equal number of gentlemen interested for the government of their country. By fruitless we mean that it could result in no valid legislation on the subject to which the inquiry referred.

"What was this committee to do?

"To inquire into the nature and history of the real estate pool. How indefinite! What was the real estate pool? Is it charged with any crime or offense? If so, the courts alone can punish the members of it. Is it charged with a fraud against the government? Here, again, the courts, and they

¹¹ 103 U.S. 168 (1881).

alone, can afford a remedy. Was it a corporation whose powers Congress could repeal? There is no suggestion of the kind. The word pool, in the sense here used, is of modern date, and may not be well understood, but in this case it can mean no more than that certain individuals are engaged in dealing in real estate as a commodity of traffic, and the *gravamen* of the whole proceeding is that a debtor of the United States may be found to have an interest in the pool. Can the rights of the pool or of its members, and the rights of the debtor, and of the creditor of the debtor, be determined by the report of a committee or by an Act of Congress?

"If they cannot, what authority has the House to enter upon this investigation into the private affairs of individuals who hold no office under the government."¹²

This seems to say that where Congress cannot legislate, it cannot investigate, yet there is also the possibility that a valid purpose might have been stated and that had the authorizing language been narrower, the investigation might have escaped challenge.

In addition to the uncertainty over whether the difficulty in *Kilbourne* could have been remedied by a differently drawn resolution, the opinion also relies to some extent on the fact that the bankruptcy court already had jurisdiction over the matter in issue.

Whatever its real ground of decision, the *Kilbourne* case read as imposing any substantial limitation on the power of Congress has been greatly qualified. Subsequent cases made it clear that the mere possibility of legislation would be sufficient to establish a valid purpose for an investigation and that such an investigation might proceed into fields where actual legislation would not be allowed. For instance, *Re Chapman*,¹³ upholding the constitutionality of the statute which makes contempt of Congress criminal, permitted its application to a question which would have required the witness to disclose the names of various Senators with whom he had dealt. The investigation was for the purpose of discovering if any Senator had profited from speculations in the sugar market while certain legislation was pending. Of course, Congress has the power to investigate into the conduct of its own members and to that extent *Chapman* is distinguishable from *Kilbourne*, but the analogy is very clear. In fact, later cases have obliterated the distinction the Court held in *McGrain v. Daugherty*¹⁴ that even though no specific legislation was contemplated or mentioned in the authorizing resolution, Congress could investigate corruption in the executive branch, and in so doing could require the papers and records of a private person. It was not to be assumed that no legislation would eventuate and, in addition, one of the functions of Congress is to see to the proper

¹² *Id.* at 194-95.

¹³ 166 U.S. 661 (1897).

¹⁴ 273 U.S. 135 (1927).

operation of the government. The court quoted with approval from the *Chapman* case, saying:

"The only legitimate object the Senate could have in ordering the investigation was to aid it in legislating; and we think the subject matter was such that the presumption should be indulged that this was the real object. An express avowal of the object would have been better; but in view of the particular subject-matter was not indispensable. In the *Chapman* case, where the resolution contained no avowal, this court pointed out that it plainly related to a subject-matter of which the Senate had jurisdiction, and said, 'We cannot assume on this record that the action of the Senate was without a legitimate object;' and also that 'it was certainly not necessary that the resolutions should declare in advance what the Senate meditated doing when the investigation was concluded.' . . ."¹⁵

The Court went on to hold that investigation of the administration of the Justice Department was a legitimate object and that possible disclosure of certain crimes in the process did not adulterate it. This latter point was raised again in *Sinclair v. United States*,¹⁶ a case arising out of a related investigation. There, the witness defended on the ground that the information sought would have been useful in a criminal proceeding then pending against him, a proceeding which had been specifically ordered by the Senate. The Court held that the fact that this might be one of the consequences of the investigation did not demonstrate an invalid purpose. This result is quite clearly inconsistent with the conclusion reached on the similar point in *Kilbourne v. Thompson*.^{16a}

McGrain, *Sinclair* and *Chapman* have created a weighty and very nearly conclusive presumption^{16b} that a valid legislative purpose exists when Congress sets out to investigate. The presumption is reinforced in practice in recent years by the increased number of investigations which have not been questioned on such grounds and in theory by the enormous increase in the legislative powers of Congress which attended the New Deal. Previous holdings of the Supreme Court with regard to Communism and subversion¹⁷ have established the power of Congress in those related fields, and provide at least initial authority for investigations like the one at issue in the *Watkins* case. Moreover, it has been held that the Court will not inquire very far into the motives of Congress,¹⁸ and other cases make it clear that

¹⁵ *Id.* at 178.

¹⁶ 279 U.S. 263 (1929).

^{16a} Compare *United States v. Icardi*, 140 F. Supp. 383 (DDC 1956), a perjury case where the court refused to find competent a committee, which it found had the purpose of determining the defendant's guilt or innocence. This was an alternative holding.

^{16b} But *cf.* *United States v. Icardi*, *supra* note 16a.

¹⁷ *Dennis v. United States*, 341 U.S. 494 (1951); *American Communications Ass'n, CIO v. Douds*, 339 U.S. 382 (1950).

¹⁸ *United States v. Kahriger*, 345 U.S. 22 (1953).

the investigatory power will not be confined strictly to subjects which are clearly within the legislative province of the Congress.¹⁹ It seems very clear, therefore, that almost any investigation is *prima facie* valid and that objection must be taken, if at all, to specific aspects of an investigation to the scope and manner of its conduct.

2. *The investigation must be conducted within the scope of the authority granted.*

The courts will interpret the authority granted to an investigating committee in order to be certain that the investigation is being conducted according to and within its terms. This has been a ground for striking down contempt convictions and indictments²⁰ and other committee activities,²¹ and in recent years the principle has been applied to avoid difficult constitutional questions.²² A contempt indictment must allege the authority of the investigating committee so the Court can determine these questions.²³

3. *The examination of witnesses must be pertinent to the purpose of the investigation.*

The courts will decide the pertinency of questions asked or documents required of a witness to the matters under investigation. Such a decision is required by section 192 which provides for punishment only for refusal to answer questions "pertinent to the question under inquiry,"²⁴ and a showing of pertinency is part of the government's case to be pleaded and proved in such proceedings.²⁵ It would seem that some such requirement would exist even in the absence of the statute. Pertinency is construed to be broader than the traditional concept of relevance,²⁶ but, it does embody some limitation on the scope of an investigation.

¹⁹ *McGrain v. Daugherty*, *supra* note 14; *United States v. Josephson*, 165 F.2d 82 (2d Cir. 1947).

²⁰ *United States v. Rumely*, 345 U.S. 41 (1953); *cf. United States v. Lamont*, 236 F.2d 312 (2d Cir. 1956); *United States v. Kamin*, 136 F. Supp. 791 (D. Mass. 1956).

²¹ *Reed v. County Commissioners*, 277 U.S. 376 (1928) (resolution authorizing congressional investigation of vote frauds does not give committee power to bring suit to obtain possession of ballots and ballot boxes).

²² *United States v. Rumely*, *supra* note 20.

²³ *United States v. Lamont*, 236 F.2d 312 (2d Cir. 1956); *cf. United States v. Kamin*, 135 F. Supp. 382 (D. Mass. 1955); *id.*, 136 F. Supp. 791 (D. Mass. 1956).

²⁴ 55 STAT. 942 (1938), 2 U.S.C. § 192 (1952). This provision is set out in full at note 36 *infra*.

²⁵ See: *Sinclair v. United States*, 279 U.S. 263, 296-97 (1929); *Bowers v. United States*, 202 F.2d 447 (D.C. Cir. 1953). The question of pertinency has been said to be one for the court, *Sinclair v. United States*, 279 U.S. 263, 298 (1929), but in *United States v. Orman*, 207 F.2d 148 (3d Cir. 1953), the opinion says that it is for the jury to assess the evidence on this point. Apparently the Court was to make the initial determination and then the jury was to be convinced beyond a reasonable doubt. But *cf. United States v. Lamont*, 236 F.2d 312 (2d Cir. 1956); *United States v. Kamin*, 135 F. Supp. 382 (D. Mass. 1955) where the Court determined pertinency.

²⁶ *United States v. Orman*, 207 F.2d 148 (3d Cir. 1953).

4. *The conduct of the investigation may be limited by provisions of the Constitution which are applied by the courts.*

There has been and continues to be considerable debate over the applicability of various provisions of the Constitution to congressional investigations. For instance, it is clear that the self-incrimination clause of the Fifth Amendment applies.²⁷ Beyond this, the greatest concern is the First Amendment and lower federal courts have rejected attempts to apply it to investigating committees.²⁸ The Supreme Court has avoided the issue.²⁹ The problem is in defining its proper application to questions about the beliefs and associations of a witness and of his friends. Subsequent paragraphs will take up these and other problems. It is enough to say here that although they were avoided in the *Watkins* case they cannot be dodged much longer and they are now very prominently in the minds of the Justices.

The Decision in Watkins v. United States

Mr. Watkins was a labor union official and organizer who was subpoenaed to appear before a subcommittee of the Committee on Un-American Activities of the House of Representatives. This committee was originally set up as a select committee in 1938³⁰ and in 1945³¹ it was made a standing committee of the House. The authorizing resolution provided:

"The Committee on Un-American Activities, as a whole or by subcommittee, is authorized to make from time to time investigations of (i) the extent, character, and objects of un-American propaganda activities in the United States, (ii) the diffusion within the United States of subversive and un-American propaganda that is instigated from foreign countries or of a domestic origin and attacks the principle of the form of government as guaranteed by our Constitution, and (iii) all other questions in relation thereto that would aid Congress in any necessary remedial legislation.³²

There was no specific delegation of the authority by the committee to the subcommittee before which the petitioner appeared except a general resolution:

"Be it resolved, that the Chairman shall have authority from time to time to appoint subcommittees composed of one or more members of the Com-

²⁷ *Emspak v. United States*, 349 U.S. 190 (1955); *cf.* *Quinn v. United States*, 349 U.S. 155 (1955); *Bart v. United States*, 349 U.S. 219 (1955).

²⁸ *Barenblatt v. United States*, 240 F.2d 875 (D.C. Cir. 1957); *Morford v. United States*, 176 F.2d 54 (D.C. Cir. 1949); *Lawson v. United States*, 176 F.2d 49 (D.C. Cir. 1949); *Barsky v. United States*, 167 F.2d 241 (D.C. Cir. 1947); *United States v. Josephson*, 165 F.2d 82 (2d Cir. 1947).

²⁹ In addition to *Watkins*, see *Sweezy v. New Hampshire*, 354 U.S. 234; *United States v. Rumely*, 345 U.S. 41 (1953); *Tenney v. Brandhove*, 341 U.S. 367 (1951).

³⁰ H. Res. 282, 75th Cong., 3d Sess., 83 CONG. REC. 7568, 7586.

³¹ H. Res. 5, 79th Cong., 1st Sess., 91 CONG. REC. 10, 15.

³² H. Res. 5, 83d Cong., 1st Sess., 99 CONG. REC. 18, 24.

mittee on Un-American Activities for the purpose of performing any and all acts which the Committee as a whole is authorized to do."³³

The committee's mission, activities, and methods of operation have only seldom been more specific than its authority.^{33a}

As the government conceded, Watkins gave a candid and complete catalogue of his past activities and political associations, including his relationship to the Communist Party of which he had not been a member.³⁴ But when he was asked if he knew certain persons to have been members of the Party, Watkins refused to answer, and he made the following statement in explanation:

"I am not going to plead the Fifth Amendment, but I refuse to answer certain questions that I believe are outside the scope of your committee's activities. *I will answer any questions about those persons whom I knew to be members of the Communist Party and whom I believe still are. I will not, however, answer any questions with respect to others with whom I associated in the past.* I do not believe that any law in this country requires me to testify about persons who may in the past have been Communist Party members or otherwise engaged in Communist Party activity, but who to my best knowledge and belief have long since removed themselves from the Communist movement.

"I do not believe that such questions are relevant to the work of this committee nor do I believe that this committee has the right to undertake the public exposure of persons because of their past activities. I may be wrong, and the committee may have this power, but until and unless a court of law so holds and directs me to answer, I most firmly refuse to discuss the political activities of my past associates."³⁵ (Emphasis added.)

Though the opinions do not specifically advert to it, it will be seen at once that the issue raised by the petitioner was a very narrow one. As indicated by italicized sentences, it involved only very specific kinds of questions about persons he had known before, whose affiliations were not at the time of inquiry known to him. However that may be, the refusal to answer was reported to the House and the report certified to the United States Attorney who obtained a seven-count indictment under 2 U.S.C. § 192.³⁶

³³ Quoted in 354 U.S. 211, n.50.

^{33a} For background of this committee see Carr, *The Un-American Activities Committee*, 18 CHI. L. REV. 598 (1951); Note, *Constitutional Limitations on the Un-American Activities Committee*, 47 COLUM. L. REV. 416 (1947).

³⁴ 354 U.S. at 183-85.

³⁵ *Id.* at 185.

³⁶ This statute reads as follows:

"Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months." 52 STAT. 942 (1938), 2 U.S.C. § 192 (1952).

Petitioner was found guilty on all counts. The conviction was affirmed by the Court of Appeals for the District of Columbia sitting en banc.³⁷ That court found that Congress had the power to investigate the history of the Communist Party and to ask the questions Watkins had refused to answer. It then decided that the committee was in fact authorized to conduct an investigation into communist infiltration of labor unions, that this was a valid legislative purpose, that the subcommittee was pursuing it and that it had been made clear to the defendant through various statements by the subcommittee chairman, as well as by the nature of the questions asked and the witnesses called.

Judges Edgerton and Bazelon dissented.³⁸ They reached opposite conclusions on all these points and found that the purpose of the investigation was only exposure and therefore not a valid one. They found no bona fide investigation of any unions and no clear indication communicated or otherwise that this was the reason for the interrogation of Watkins. Furthermore, the questions not answered by Watkins were not pertinent to any authorized purpose of the committee. The Supreme Court granted certiorari.³⁹

The Court delivered three different opinions. The Chief Justice, speaking as well for Justices Black, Douglas and Brennan, handed down the previously mentioned diffuse essay which progresses from a historical discussion and acknowledgment of the power of Congress to conduct investigations, to some observations as to the various probable limits of this power and then to a treatment of the applicability of Section 192 to Mr. Watkins. At this final point the Warren opinion, ignoring its preceeding prose, apparently holds simply that the "question under inquiry" referred to in Section 192 was never made clear to the petitioner so that he cannot be convicted for having failed to answer questions allegedly pertinent.⁴⁰ This holding is based on a consideration of the authorizing statute for the Un-American Affairs Committee which is said to be too vague, as are the statements made by the subcommittee chairman at the time of inquiry. The defect was not remedied by other attempts to define the precise inquiry upon which the subcommittee was embarked, the variety of witnesses called and of questions asked precluding such specificity. Accordingly, the petitioner was convicted under a statute which did not establish an adequate standard of guilt and well known precedents required reversal.⁴¹

³⁷ *Watkins v. United States*, 233 F.2d 681 (D.C. Cir. 1956).

³⁸ *Id.* at 688-95.

³⁹ 352 U.S. 822 (1957).

⁴⁰ 354 U.S. at 208-16.

⁴¹ *United States v. Harriss*, 347 U.S. 612 (1954); *United States v. Cardiff*, 344 U.S. 174 (1952); *Winters v. New York*, 333 U.S. 507 (1948); *Musser v. Utah*, 333 U.S. 95 (1948); *Lanzetta v. New Jersey*, 306 U.S. 451 (1939).

Justices Frankfurter and Harlan concurred in a short opinion by the former which states their conception of the Court's holding. This does not include any of the Chief Justice's verbiage, but it does make very clear his final result:

"While implied authority for the questioning by the Committee, sweeping as was its inquiry, may be squeezed out of the repeated acquiescence by Congress in the Committee's inquiries, the basis for determining petitioner's guilt is not thereby laid. Prosecution for contempt of Congress presupposes an adequate opportunity for the defendant to have awareness of the pertinency of the information that he has denied to Congress. And the basis of such awareness must be contemporaneous with the witness' refusal to answer and not at the trial for it. Accordingly, the actual scope of the inquiry that the Committee was authorized to conduct and the relevance of the questions to that inquiry must be shown to have been luminous at the time when asked and not left, at best, in cloudiness. The circumstances of this case were wanting in these essentials."⁴²

Mr. Justice Clark in dissent speaks very strongly for the general power of Congress to conduct investigations, mentioning several theretofore unquestioned committee authorizations which he contended were at least as broad and vague as the one in issue. This opinion then argues, first, that *Watkins* was made aware of the matter under investigation and of the pertinency of the questions he was asked, and secondly, that no First Amendment rights were violated.

The Effect of the Decision

The immediate limitations imposed upon the *Watkins* case, as on all cases, by its facts and by the narrow holding of the majority of the Court are obvious. But the opinion of the Chief Justice is wide-ranging and because it represents the thinking of four members of the Court, it deserves consideration apart from its limitations. The principles stated earlier can be measured against the Chief Justice's pronouncements and some ideas for the future may be ventured.

1. It would seem clear that the Court has said nothing which can be regarded as holding with respect to the scope of the congressional power to authorize investigations. The approach taken, as Mr. Justice Frankfurter makes clear, is the simple and sensible one of saying, "Before we can decide whether you may invoke a criminal penalty for refusal to answer these questions, we must first know what you are trying to accomplish and what the questions have to do with it." While the Frankfurter opinion suggests that sufficient authority for the questioning by the committee may be found in previous congressional acquiescence⁴³ and that this authority is valid,

⁴² 354 U.S. at 216-18.

⁴³ *Id.* at 216.

the Chief Justice does not necessarily agree. He hints that an authorization so broad and indefinite cannot be valid, but he then goes on to say that such vagueness may be overcome by other statements of purpose.⁴⁴

A more important aspect of the Warren opinion is found in the following excerpt:

"No one could reasonably deduce from the charter the kind of investigations the Committee was directed to make. As a result, we are asked to engage in a process of retroactive rationalization. Looking backward from the events that transpired, we are asked to uphold the Committee's actions unless it appears that they were clearly not authorized by the charter. As a corollary to this inverse approach, the Government urges that we must view the matter hospitably to the power of Congress—that if there is any legislative purpose which might have been furthered by the kind of disclosure sought, the witness must be punished for withholding it. No doubt every reasonable indulgence of legality must be accorded to the actions of a coordinate branch of our Government. But such deference cannot yield to an unnecessary and unreasonable dissipation of precious constitutional freedoms."⁴⁵

The precise meaning of this passage is not brought forth by the ensuing verbiage so that it is not clear to what extent it qualifies earlier opinions. It may be suggested that since the government's contention finds support in the cases,⁴⁶ its rejection is an omen of some limitation on the presumption of a valid legislative purpose, at least where there is likely to be a "dissipation of precious constitutional freedoms."

As to the existence of a valid legislative purpose, the Chief Justice and his colleagues also make the following statement:

"We have no doubt that there is no congressional power to expose for the sake of exposure. The public is, of course, entitled to be informed concerning the workings of its government. That cannot be inflated into a general power to expose where the predominant result can only be an invasion of the private rights of individuals . . ."⁴⁷

Once again meaning in or out of context is not certain. Contentions that investigations which seek to "expose for the sake of exposure" are invalid have been made and rejected chiefly on the ground that other valid purposes existed which were not vitiated by any concomitant publicity.⁴⁸ While it will almost always be possible for Congress to demonstrate some concurrent purpose other than exposure, this dictum of the Chief Justice,

⁴⁴ Compare *id.*, pp. 201-05 with pp. 208-16.

⁴⁵ *Id.* at 204.

⁴⁶ See notes 14, 16 *supra*.

⁴⁷ 354 U.S. at 200.

⁴⁸ *Barenblatt v. United States*, 240 F.2d 875 (D.C. Cir. 1957); *Watkins v. United States*, 233 F.2d 312 (D.C. Cir. 1956); *United States v. Josephson*, 165 F.2d 82 (2d Cir. 1947); *Barsky v. United States*, 167 F.2d 82 (2d Cir. 1947).

together with the previously discussed weakening of the general presumption in favor of a valid purpose, may permit a successful attack on some investigations. Demonstration that no legislation had been passed or recommended over a period of years as a result of a committee's activities, together with statements by the members of their purpose simply to expose, might be sufficient, taken with the nature of the questions asked of a particular witness, to avoid a contempt citation. However, such facts appeared in the *Watkins* case itself and were not part of any actual holding.

In summary, then, the Warren opinion does suggest some limitations on the respect which previously has been given to the purposes of legislative investigating committees. Under just what circumstances these limitations may come into play, we cannot be sure, but it may be inferred that the *Watkins* situation is one of them, that it involves "precious constitutional freedoms" so that the purpose of the investigation must be clearly a valid one.

2. Closely related to the existence of a valid legislative purpose in the context of the Chief Justice's opinion is the problem of vagueness in the authorizing resolution. This is relevant to the determination of whether the committee is acting within its authority as well as to the determination of whether there is a valid purpose. Here, the Court is trying to find out just what the authority was so that it can see if the committee was acting within it. Because the Chief Justice emphasizes the vagueness of the authorizing resolution for the Committee on Un-American Activities so strongly, one may wonder if that alone is a sufficient reason for a witness to resist questioning. The answer seems to be that it is not because later on the opinion of the Chief Justice refers to various statements by committee members to see if they sufficiently apprised the witness of the purpose of the investigation.⁴⁹ Finding that they did not, he says that the committee has a duty to make its purpose and the pertinency of the questions clear when the witness objects. It would seem that where this is done a witness cannot rely on the vagueness of authorizing resolution. An adequate standard for a contempt finding may thus be established, at once preserving some flexibility for the Congress and protecting against the witness' possible objections to the scope and purpose of the inquiry and to the pertinency of the questions.

3. On the question of pertinency there is again no holding in *Watkins* and no discussion either, although the particular questions the defendant refused to answer, being of very doubtful pertinency might have impelled the Court's insistence on clarification of the committee's mandate. Nevertheless, the notion may be important for the future. In an effort to avoid

⁴⁹ *Supra* note 44.

decision of constitutional questions, the Court can be expected to write more law about the concept of pertinency in congressional investigations. At its broadest, the idea would comprehend a balancing of interests involving the power of Congress to investigate as against the rights of witness—in this sense most questions involving a conflict of government and individual are questions of pertinency. Limitations could be imposed on investigatory committees by a process of statutory interpretation or at least through the medium of this idea. Such an indirect approach may have merit in at least superficially enabling the Court to avoid an outright clash with Congress, and new wine has been put into old bottles in stranger ways. On the other hand, it does seem likely in view of other statements by various members of the Court, that when a constitutional question is directly presented it will be decided as such.

Treated within narrower confines, the requirement of pertinency may find its happiest application in a case like *Watkins*. The argument would be that questions as to past associations and as to the beliefs and associations of others can never be pertinent to any investigations, at least of Communism. This argument is developed in Judge Edgerton's dissent in the Circuit Court of Appeals, where he says, *inter alia*:

"These questions concerned the presence of Communists in a union between 1942 and 1947. Their presence in unions then had little or nothing to do with the question whether, at the time of the Committee hearing in 1954 Communists in unions were so numerous, so active, and so effective as to create problems that called for legislation. This is true partly because of the lapse of time, but chiefly because times had changed and legislation had changed.

"Communist affiliation between 1942 and 1947 did not mean what Communist affiliation meant in 1954 . . ."⁵⁰

To this might be answered that such information would help the committee to discover contemporary Communists through the individuals thus disclosed. Nevertheless, there exists the problem of remoteness which can be recognized even while the broad investigatory power is granted.⁵¹ Beyond this—and here the expanded concept of pertinency comes into play—the courts might be persuaded to consider the undeniable social consequences of disclosure to those told on and to the teller. Weighing these considerations against the rather low contemporaneous informational value of the desired answers as well as their possible availability from other sources the

⁵⁰ 233 F.2d at 691.

⁵¹ Compare *Bowers v. United States*, 202 F.2d 447 (D.C. Cir. 1953), where a contempt conviction was reversed on grounds that questions by the Senate Crime Committee relating to the defendant's activities in 1942 were too remote. In addition to remoteness in time, there may be remoteness in scope where the question is very much broader than the inquiry being conducted. *United States v. Kamin*, 135 F. Supp. 382 (D. Mass. 1955).

conclusion that the question was not pertinent would be easy to reach. As time passes, however, the nature of the Communist threat may not change and the remoteness argument may not be so strong. Questions about past beliefs and associations may then be shown to be pertinent to present conditions so that some other rationale will have to be found, if limitations are to be imposed. Possible alternatives are discussed in the following section.

Other Limitations on the Investigatory Power

Delegation. There exists the possibility of an initial limitation on the activities of investigating committees which does not lend itself to ready classification. It is suggested by the Chief Justice in both *Watkins* and *Sweezy* and centers on the fact that most investigations are conducted by very small subcommittees, some of them having only one or two members. The danger of vesting so much power and discretion in so few men has been pointed out and the practice has been condemned.⁵² Of course, wherever there is a subcommittee, there is an additional problem of determining its authority and this may be very much more difficult than in the case of the parent committee because of the lack of any formal delegation. At least one court has construed such authority very strictly,⁵³ and it is not clear in the *Watkins* and *Sweezy* cases whether the Chief Justice is relying on this point alone. His language indicates, however, that he would go further and that his concern is with the tenuous relationship between the investigating body and the legislature. Speaking of the severe consequences of exposure for the witness and of the consequent need for a clear mandate from Congress in order to be sure that the committee has not gone too far, the Chief Justice adds the following:

"More important and more fundamental than that, however, it insulates the House that has authorized the investigation from the witnesses who are subjected to the sanction of compulsory process. There is a wide gulf between the responsibility for the use of investigative power and the actual exercise of that power. This is an especially vital consideration in assuring respect for constitutional liberties. Protected freedoms should not be placed in danger in the absence of a clear determination by the House or the Senate that a particular inquiry is justified by a specific legislative need."⁵⁴

Again, in the *Sweezy* case Chief Justice Warren and his colleagues find fault with an investigation conducted by the Attorney General of New Hampshire at the request of that state's legislature which wanted him to look into violations of the subversive activities act. Relying again on the breadth and vagueness of the authorization the opinion states:

⁵² GRISWOLD, *THE FIFTH AMENDMENT TODAY* 29, 40-43, 45-46 (1955).

⁵³ *United States v. Kamin*, 136 F. Supp. 791 (D. Mass. 1956).

⁵⁴ 354 U.S. at 205.

"The respective roles of the legislature and the investigator thus revealed are of considerable significance to the issue before us. It is eminently clear that the basic discretion of determining the direction of the legislative inquiry has been turned over to the investigative agency. The Attorney General has been given such a sweeping and uncertain mandate that it is his decision which picks out the subjects that will be pursued, what witnesses will be summoned and what questions will be asked. In this circumstance, it cannot be stated authoritatively that the legislature asked the Attorney General to gather the kind of facts comprised in the subjects upon which petitioner was interrogated.

"Instead of making known the nature of the data it desired, the legislature has insulated itself from those witnesses whose rights may be vitally affected by the investigation

"The conclusion that we have reached in this case is not grounded upon the doctrine of separation of powers Our conclusion does rest upon a separation of the power of a state legislature to conduct investigations from the responsibility to direct the use of that power insofar as that separation causes a deprivation of the constitutional rights of individuals and a denial of due process of law."⁵⁵

Certainly the *Sweezy* case is distinguishable in more than one way from *Watkins*, but it may not be without significance that both mention with concern the separation of the actual exercise of investigatory power from the responsibility for its exercise, and the significance persists even though these statements can be fitted into the narrower holdings of both cases.

With regard to the exercise of committee power by subcommittees, the first argument would be that Congress did not intend the delegation of its vast investigatory power to one or two men. Here, the dissenting opinion of Mr. Justice Frankfurter in the case of *Jay v. Boyd*⁵⁶ may be illuminating. That case involved the discretionary power of the Attorney General to suspend deportation and upheld his right to rely on confidential information in denying suspension. Mr. Justice Frankfurter dissented without reaching the main issue;⁵⁷ he said that Congress had intended that only the Attorney General act according to his discretion and that there was no intention to permit delegation of this essentially personal power to a hearing officer or subordinate as had been done. Accordingly, while the Attorney General might rely on undisclosed information if he saw fit, his subordinates could not, and were required to make a full disclosure. Of course, as Mr. Justice Frankfurter himself points out in *Watkins*, past congressional approval may constitute authority for one-man investigating subcommittees, and this is borne out by the previously quoted language of the authorizing resolution of the Un-American Activities Committee which permits

⁵⁵ 354 U.S. 253-55.

⁵⁶ 351 U.S. 345 (1956).

⁵⁷ *Id.* at 370.

delegation.⁵⁸ But this degree of delegation may not have been contemplated.

But beyond the question of what Congress intends, the language used by the Chief Justice could be the basis for an argument of the constitutional invalidity of vesting the power and discretion of the whole Congress in one man. The argument might rest upon familiar, albeit not too vigorous, precedents,⁵⁹ and on the fact that if the power to investigate is a function of the power to legislate, then as there are limits on the delegation of the latter there are also limits on the delegation of the former. The delegation argument gains additional weight when it is realized that the authority includes power to issue subpoenas and to compel testimony on the most personal and private matters. The Fourth as well as the First and Fifth Amendments is in issue here and there seem to be no traditional safeguards.^{59a}

First Amendment: The opinion of Chief Justice Warren speaks of limitations on the power to investigate which will protect the rights of an individual witness called to testify before a committee. This raises problems of what rights exist and when they will be protected. Reference has been most frequent to the First Amendment⁶⁰ and that is the Chief Justice's main reliance; the purpose here is simply to see what *Watkins* adds to the solution of these First Amendment questions without attempting to discuss other rights a witness may have. The Chief Justice in his observations concerning the First Amendment has the concurrence of three other members of the Court, and earlier opinions reflect the concern of other Justices. For instance, in *United States v. Rumely*⁶¹ the Court very frankly sidestepped a First Amendment problem, all the while recognizing that it existed or could have. Justices Black and Douglas concurred in a concurring opinion by the latter which found that the First Amendment had been violated.⁶² So, too, in *Tenney v. Brandhove*⁶³ the Court held that state legislators were immune from suit under one of the Civil Rights Acts growing out of their conduct of an investigation. Nevertheless, the opinion of the Court spe-

⁵⁸ *Supra* note 32.

⁵⁹ *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935).

^{59a} See GRISWOLD, *op. cit. supra* note 52, at 46. For a discussion of the Fourth Amendment problem in a slightly different context, see Note, *The Power of Congress to Investigate and to Compel Testimony*, 70 HARV. L. REV. 671, 673-74 (1957).

⁶⁰ E.g., *Barenblatt v. United States*, 240 Fed. 875 (D.C. Cir. 1957); *Barsky v. United States*, 167 F.2d (D.C. Cir. 1947); *United States v. Josephson*, 165 F.2d 82 (2d Cir. 1947); Lashley, *The Investigating Power of Congress: Its Scope and Limitations*, 40 A.B.A.J. 763 (1954); Merry, *The Investigating Power of Congress: Its Scope and Limitations*, 40 A.B.A.J. 1073 (1954). For an exhaustive discussion of the First Amendment's applicability see Comment, *Legislative Inquiry Into Political Activity: First Amendment Immunity from Committee Interrogation*, 65 YALE L.J. 1159 (1956).

⁶¹ 345 U.S. 41 (1953).

⁶² *Id.* at 48.

⁶³ 341 U.S. 367 (1951).

cifically pointed out that the result had no necessary application to other aspects of legislative activity:

"It should be noted that this is a case in which the defendants are members of a legislature. Legislative privilege in such a case deserves greater respect than where an official acting on behalf of the legislature is sued or the legislature seeks the affirmative aid of the courts to assert a privilege."⁶⁴

The concurring opinion of Mr. Justice Black goes even further to make it entirely clear that he would not apply the immunity reasoning in a contempt case where the unconstitutional conduct of the investigators was raised as a defense.⁶⁵

Certainty that under appropriate circumstances a majority of the Court will invoke the First Amendment is to be found in the *Sweezy* case where Justices Frankfurter and Harlan, concurring,⁶⁶ clearly recognize and apply such a limitation through the Fourteenth Amendment to an investigation conducted by a state legislature. Similar recognition in a federal case would insure at least six votes favorable to the application of the First Amendment. Accordingly, the problem now becomes one of deciding when its application will be appropriate. The possible circumstances and considerations are kaleidoscopic, as in all cases involving the freedoms guaranteed by the First Amendment so that prediction is very nearly impossible. Some help may be found, however, in an examination of the kinds of questions for which protection might be sought.

In the first place there are questions relating directly to the dissemination of literature and ideas. For instance in *United States v. Rumely*⁶⁷ there were in issue questions about the identity of purchasers of books of a "particular political tendentiousness" and there was a similar situation in *Tenney v. Brandhove*.⁶⁸ Investigations which lead to questions of this sort would seem to come within traditional concepts of First Amendment protection, so that the Court could determine the extent of the interference and weigh it against the interest of the Congress.

Secondly, there are questions about a witness' own beliefs and associations, political or otherwise. These present more difficulty. Here there is a recognizable First Amendment interest, but previous cases in the lower federal courts have rejected such contentions,⁶⁹ though some of them over strong dissents.⁷⁰ It has been held that a blanket objection to the authority

⁶⁴ *Id.* at 378.

⁶⁵ *Id.* at 379-81.

⁶⁶ 354 U.S. 255.

⁶⁷ *Supra* note 61.

⁶⁸ *Supra* note 63.

⁶⁹ *Barenblatt v. United States*, 240 F.2d 875 (D.C. Cir. 1957); *Barsky v. United States*, 167 F.2d 241 (D.C. Cir. 1947); *United States v. Josephson*, 165 F.2d 82 (2d Cir. 1947).

⁷⁰ *Barsky v. United States*; *United States v. Josephson*, both *supra* note 69.

of the Un-American Activities Committee to inquire into the beliefs of any person is not well taken.⁷¹ Congress has a legitimate legislative concern in the field of subversion and there can be valid legislation in the field of thought and opinion. By the same token, challenge to specific questions on the grounds that they would require the witness to disclose political affiliations have been turned aside.⁷² It has been persuasively argued, and probably cannot now be successively countered, that the mere power to inquire into beliefs and associations should not invalidate a congressional investigation, but there remains a great deal of room to object to specific questions in specific situations.

These narrower objections might be based on the right to remain silent, though this has not been thought to be a part of the First Amendment guaranties.⁷³ Stated thus baldly, there may be no right to remain silent, but to the extent that silence implies conscientious scruple, it should be protected. Compare, for instance, the famous language of Mr. Justice Jackson:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty can prescribe what shall be orthodox in politics, religion, or other matters of opinion *or force citizens to confess by word or act their faith therein*. If there be any circumstances which permit an exception, they do not now occur to us."⁷⁴ (Emphasis added.)

The italicized portion of this quotation would suggest some right to remain silent in the face of official compulsion. Taken with the following words of the Chief Justice in the *Watkins* case:

"The mere summoning of a witness and compelling him to testify, against his will, about his beliefs, expressions or associations is a measure of governmental interference."⁷⁵

And with the statement in *Kilbourne v. Thompson* that Congress has no right to look into the private affairs of a citizen,⁷⁶ the Jackson words are the basis of a strong argument that there is a protected right to keep silent. The right to speak freely would seem necessarily to comprehend the right to formulate one's thoughts and this cannot be done in the teeth of compulsion to disclose them.

But there is no urgent need to consider any right to keep silent in vacuo. What is of greatest concern to the Chief Justice is the effect of disclosure upon the witness and the consequent restraint upon entertainment or ex-

⁷¹ *Supra* notes 69, 70.

⁷² *Ibid.*

⁷³ *Ibid.* See also Van Alstyne, *Congressional Investigations*, 15 F.R.D. 471, 481 (1954).

⁷⁴ *West Virginia State Bd. of Education v. Barnette*, 319 U.S. 624, 642 (1943).

⁷⁵ 354 U.S. 197.

⁷⁶ *Id.* at 189, n.12.

pression of unorthodox ideas. The rest of the paragraph just quoted from *Watkins* is as follows:

"And when those forced revelations concern matters that are unorthodox, unpopular, or even hateful to the general public, the reaction in the life of the witness may be disastrous. This effect is even more harsh when it is past beliefs, expressions or associations that are disclosed and judged by current standards rather than those contemporary with the matters exposed. Nor does the witness alone suffer the consequences. Those who are identified by witnesses and thereby placed in the same glare of publicity are equally subject to public stigma, scorn and obloquy. Beyond that, there is the more subtle and immeasurable effect upon those who tend to adhere to the most orthodox and uncontroversial views and associations in order to avoid a similar fate at some future time."⁷⁷

In *Sweezy*, the Chief Justice refers to *Wieman v. Updegraff* and its discussion of the consequences of being excluded from public employment on loyalty grounds. He then goes on to say:

"The sanction emanating from legislative investigations is of a different kind than loss of employment. But the stain of the stamp of disloyalty is just as deep. The inhibiting effect in the flow of democratic expression and controversy upon those directly affected and those touched more subtly is equally grave . . ."⁷⁸

Subsequent language of *Sweezy* makes the precise effect of this unascertainable since it seems to impose some sort of scienter requirement before a witness may be examined without explaining how it should apply. These statements may further be qualified by saying that, since the consequences of investigation and disclosure are so severe, it is most important that the authority of the committee involved be made clear and that there is no attempt to suggest limitations on a clearly drawn authorization. It would be unrealistic so to limit these expressions and it seems clear that the Chief Justice is speaking for another day and that he contemplates circumstances in which his statements will have direct constitutional significance.⁸⁰

The third kind of question which might be asked of a witness and might conceivably be within the protection of the First Amendment is exemplified by those actually in issue in *Watkins*; that is, questions about other persons. Here, in addition to the consequences of disclosure for the witness himself, there are similar penalties for other people who probably are or were his friends. The Fifth Amendment privilege against self-incrimination is available to a witness who would protect himself, but not always to one who would protect others. It has been cogently pointed out that a man

⁷⁷ *Id.* at 198.

⁷⁸ 344 U.S. 183 (1952).

⁷⁹ 354 U.S. 248.

⁸⁰ See also Van Alstyne, *op. cit. supra* note 73, at 482.

should not stand better for having protected himself than he does for having protected his friends and associates.⁸¹ The feeling against the "stool pigeon," even the involuntary one, is too fundamental to be ignored by the law in the absence of compelling necessity. It may be, however, that the Court will find that the First Amendment is not a suitable container for such notions; perhaps they come closer to the concept of due process of law in its most basic sense, to some sort of fundamental notion of fair play⁸² so that the besieged witness may find protection in the Fifth Amendment instead of the First. But whatever the source of the protection, it seems most likely that it will be recognized.

All this not to say that always in every case a witness will be entitled to refuse to answer questions about himself or about others even where beliefs, conscience or associations are concerned. There may be circumstances which justify compulsion; there may be a legislative purpose and a legislative informational need to which such matters are pertinent and which are so important as to justify inquiry in the face of whatever constitutional provisions are thought to apply. Relevant here would be the nature and gravity of the subject matter being investigated, the availability of the information from other sources or the fact that it was already in the hands of the committee, the consequences of disclosure and the real purposes of the investigation. There must be urgent justification to permit such interferences with individual rights as the Chief Justice sees in some investigations but we will have to await further cases to define the permissible scope of congressional power where it impinges on individual liberty. This is a familiar constitutional process involving a case-by-case weighing of interest and perhaps a test not unlike the clear and present danger test. Whatever the terminology, this sort of adjudication will be necessary.⁸³ It can be seen in operation in this particular part of the civil rights field in the concurring opinion of Mr. Justice Frankfurter in *Sweezy v. New Hampshire* where he recognizes a protectible First Amendment right of the witness and finds that it outweighs any conceivable danger to the government of the State of New Hampshire from internal subversion. Such, it is submitted, must be the future course of decision in this area.

Conclusion

While the actual result in *Watkins* is narrow, the case brings closer to decision the various problems of applying limitations to the investigating committees of the Congress when their activities collide with individual rights. The opinion of Chief Justice Warren, more impassioned than artic-

⁸¹ *GRISWOLD*, *op. cit. supra* note 52, at 26. See generally, *id.* at 24-26.

⁸² *Id.* at 31-53; O'BRIEN, *NATIONAL SECURITY AND INDIVIDUAL FREEDOM* (1955).

⁸³ Freund, *The Supreme Court and Civil Liberties*, 4 *VAND. L. REV.* 151 (1953).

ulate, suggests that such limitations may be found in the First Amendment if not in the provisions of the contempt statute itself, and that they may be justified by the obvious and undesirable consequences such investigations have had on the individuals concerned and on the body politic. It may be that his words will provoke Congress into self-regulation but in the absence of that, they give good grounds to expect further pronouncements from the Court which will more clearly define the rights of witnesses before committees of Congress.